

# 1997-98 SESSION COMMITTEE HEARING RECORDS

Committee Name:

Joint Committee on  
Finance (JC-Fi)

Sample:

Record of Comm. Proceedings ... RCP

- 05hrAC-EdR\_RCP\_pt01a
- 05hrAC-EdR\_RCP\_pt01b
- 05hrAC-EdR\_RCP\_pt02

➤ Appointments ... Appt

➤ \*\*

➤ Clearinghouse Rules ... CRule

➤ \*\*

➤ Committee Hearings ... CH

➤ \*\*

➤ Committee Reports ... CR

➤ \*\*

➤ Executive Sessions ... ES

➤ \*\*

➤ Hearing Records ... HR

➤ \*\*

➤ Miscellaneous ... Misc

➤ 97hrJC-Fi\_Misc\_pt92b\_LFB

➤ Record of Comm. Proceedings ... RCP

➤ \*\*

<p>To: Joint Committee on Finance</p> <p>From: Bob Lang, Director Legislative Fiscal Bureau</p>
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## ISSUE

### **Water Pollution Credit Trading (DNR -- Water Quality)**

[LFB Summary: Page 443, #19]

## CURRENT LAW

DNR administers the Wisconsin Pollution Discharge Elimination System (WPDES) permit program which sets the concentrations and mass limits of specific chemicals and organisms for permitted (point) sources of water pollution discharges.

## GOVERNOR

**Governor:** Provide \$50,000 annually to fund a project to evaluate the trading of water pollution credits as follows:

**Projects.** Require DNR to administer one or more projects involving the trading of water pollution credits among sources of water pollution. The project would authorize a permitted source of water pollution discharges to increase the discharge of pollutants above the levels that would otherwise be authorized in the permit, provided the permitted source does one of the following:

- a. Reaches an agreement with another permitted source under which the other source agrees to reduce the discharge of pollutants in the project area below the levels that would otherwise be required in the permit;

b. Reaches an agreement with another person who is not required to obtain a water pollution discharge permit under which the other person agrees to reduce the amount of water pollution it causes in the project area below the level of pollution it caused when the agreement is reached; or

c. Reaches an agreement with DNR, or a local unit of government, under which the source pays money to DNR or a local unit of government that would be used to reduce water pollution in the project area.

Require DNR to amend the permits of the sources entering into the project agreement in order to enable the agreement to be implemented. Further, the Department would be allowed to select a watershed or water basin as a project area if all the following apply:

a. The watershed or water basin contains at least one impaired water body that DNR has identified to the U.S. Environmental Protection Agency;

b. The watershed contains both agricultural and municipal sources of water pollution and both are point or nonpoint sources of pollution; and

c. Potential participants in the watershed or water basin exhibit interest in participating in a project.

**Local Committees.** Require DNR to appoint a local committee for each project to advise the Department concerning the project. The local committee would include a representative of each person in the project area who holds a water pollution discharge permit. A local priority watershed or lake committee could serve as the project committee if it includes representatives for each permitted source within the project area.

**Appropriations.** Create the following appropriations: (a) a continuing, segregated appropriation (funded at \$50,000 annually) from the nonpoint account of the environmental fund to assist in funding water pollution credit trading projects; and (b) a continuing, program revenue appropriation for all moneys received from agreements reached with sources of water pollution in project areas for activities to reduce pollution in the project area.

**Reports.** Beginning no later than September 1, 1998, and annually thereafter, require that DNR submit a report to the Governor, the Secretary of DOA and the LWCB on the progress and status of each project in achieving water quality goals and coordinating state and local efforts to improve water quality.

## DISCUSSION POINTS

1. The federal Clean Water Act requires states to develop the total maximum daily load (TMDL) of specific pollutants and analyze the maximum amount of point and nonpoint source contributions of the pollutant that a water body can receive to assure compliance with water quality standards. The TMDL approach involves comparing and evaluating the environmental benefits and costs of different control strategies for different pollutants. That is, DNR is required to identify all sources of pollutants to a water body and develop the point, nonpoint and other controls necessary to allow the water body to support its designated use (for example, fishable and swimmable).

2. As part of the TMDL approach required under the Clean Water Act, DNR and individual businesses, local governments and environmental groups will develop strategies on the most affordable and effective ways to achieve the needed pollutant reductions in particular water bodies. One of the potential strategies that has been identified involves trading of water pollution credits among the various pollution sources to potentially achieve improved water quality at a lower cost. For example, allowing a permitted source to forgo a capital improvement necessary to meet its potential permit requirements and, in turn, contract with other sources emitting to the same water body to reduce their discharges in order to achieve an equal or greater level of water quality at a lower cost.

3. The bill would develop a program that would create a pollutant credit trading mechanism. Under the bill a permitted source would be allowed to exceed its allowable discharge levels if that source (a) enters into an agreement with another permitted source or a non-permitted (primarily nonpoint sources) whereby the other source agrees to reduce its pollutant discharges to the project area, or (b) agrees to pay DNR or a local unit of government that would be used to reduce water pollution in the project area. Essentially, DNR would be required to initiate a project whereby discharges of pollutants are reallocated among the various sources within the project area in order to achieve water quality at a lower cost.

4. While the concept of water pollution credit trading is generally agreed upon as a viable strategy to meet the federal Clean Water Act requirements, the program as drafted may not comply with the federal law. DNR indicates that allowing a permitted source to exceed an existing permit requirement may violate the federal Clean Water Act. However, they indicate that the terms and limitations of future permits could incorporate the concept of pollutant credit trading.

5. Further, while the program would allow one source to go above its allowable discharge levels, the program, as proposed, would not require that the agreement result in a comparable or greater reduction in the overall discharge of pollutants to the project area. DNR argues that to be consistent with the TMDL concept and federal requirements, the program should require a "net gain" in the reduction of pollutants or improvements to water quality as a result of any agreement entered into by a permitted source.

6. As a result, while DNR agrees with the concept of the pilot program, the Department recommends that the proposed program be modified to ensure that it is consistent with the federal Clean Water Act and to ensure that any agreements entered into by permitted sources under the program result in a net improvement to water quality.

7. It is unclear how the agreements involving nonpoint sources would be enforced. DNR has limited enforcement authority over nonpoint sources of water pollution (the critical sites provisions of the nonpoint program--which has never been invoked--and the NR 243 animal waste regulatory authority) compared to its authority over point sources. Therefore, it is unclear whether DNR or the permitted source would be required to enforce a water pollution credit trading agreement involving a nonpoint source. For example, it is unclear whether DNR would take the regulatory actions necessary to require a nonpoint source to meet the reduction levels outlined in the agreement or whether DNR would take regulatory action against the permitted source and that source would then have to pursue a private action against the nonpoint source.

8. While the administration refers to the proposed program as a "pilot" program, the bill places no restriction on the number of agreements or projects that could be entered into, nor is there a sunset date in SB 77. Further, no estimate of program revenues under the program is provided. If a pilot project is intended, the bill could be amended to restrict the program to no more than three projects or be sunset on June 30, 1999.

9. The \$50,000 annually in nonpoint SEG would be used for travel, to contract for technical and legal expertise and for project evaluation of agreements involving pollutant credit trading. However, it is not clear to what extent costs associated with the agreements would be charged to participants and received as program revenues. Since the level of funding necessary to facilitate the projects is uncertain at this time, and the need for project evaluation may, or may not, occur during the 1997-99 biennium, the funding may not be necessary at this time. Further, it should be noted that \$100,000 SEG in the biennium would be funded from the nonpoint account which would have a deficit of approximately \$600,000 on June 30, 1999, under SB 77 expenditure levels.

10. The bill would require DNR to appoint a local committee for each project to advise the Department concerning the project that would include a representative of each person in the project area who holds a water pollution discharge permit.

11. While representation of permitted sources on the local committees is warranted, it may not be necessary to include each permitted source as a member of the local committee. Depending on the size of the project area, the number of permittees could be substantial.

## ALTERNATIVES TO BASE

1. Approve the Governor's recommendation to: (a) provide \$50,000 annually from the nonpoint account of the environmental fund for a program to evaluate the trading of water pollution credits; (b) create a SEG and PR appropriation; (c) require DNR to appoint a local committee for each project that would include a representative of each person in the project area who holds a water pollution discharge permit; and (d) require DNR to submit a report on the progress and status of each project in achieving water quality goals.

<u>Alternative 1</u>	<u>SEG</u>
1997-99 FUNDING (Change to Base)	\$100,000
[Change to Bill]	\$0]

2. In addition to the Governor's recommendation, do one or more of the following;

a. Require that the program be implemented consistent with the federal Clean Water Act and that the projects lead to an improvement in water quality in the project area.

b. Require that the local committee include one or more representatives of persons holding permits in the project area.

c. Restrict the program to no more than three projects.

d. Require that no projects may be undertaken after June 30, 1999.

e. Delete SEG funding (\$50,000 annually).

<u>Alternative 2e</u>	<u>SEG</u>
1997-99 FUNDING (Change to Base)	\$0
[Change to Bill]	- \$100,000]

3. Maintain current law.

<u>Alternative 3</u>	<u>SEG</u>
1997-99 FUNDING (Change to Base)	\$0
[Change to Bill]	- \$100,000]

Prepared by: Al Runde

MO# 2a and b

2 BURKE	<input checked="" type="radio"/>	N	A
DECKER	<input checked="" type="radio"/>	N	A
GEORGE	<input checked="" type="radio"/>	N	A
JAUCH	<input checked="" type="radio"/>	N	A
WINEKE	<input checked="" type="radio"/>	N	A
SHIBILSKI	<input checked="" type="radio"/>	N	A
COWLES	<input checked="" type="radio"/>	N	A
PANZER	<input checked="" type="radio"/>	N	A
JENSEN	<input checked="" type="radio"/>	N	A
OURADA	<input checked="" type="radio"/>	N	A
HARSDORF	<input checked="" type="radio"/>	N	A
ALBERS	<input checked="" type="radio"/>	N	A
GARD	<input checked="" type="radio"/>	N	A
KAUFERT	<input checked="" type="radio"/>	N	A
LINTON MURPHY	<input checked="" type="radio"/>	N	A
COGGS	<input checked="" type="radio"/>	N	A

MO# 2d

1 BURKE	<input checked="" type="radio"/>	N	A
2 DECKER	<input checked="" type="radio"/>	N	A
GEORGE	<input checked="" type="radio"/>	N	A
JAUCH	<input checked="" type="radio"/>	N	A
WINEKE	<input checked="" type="radio"/>	N	A
SHIBILSKI	<input checked="" type="radio"/>	N	A
COWLES	<input checked="" type="radio"/>	N	A
PANZER	<input checked="" type="radio"/>	N	A
JENSEN	Y	<input checked="" type="radio"/>	A
OURADA	Y	<input checked="" type="radio"/>	A
HARSDORF	<input checked="" type="radio"/>	N	A
ALBERS	<input checked="" type="radio"/>	N	A
GARD	Y	<input checked="" type="radio"/>	A
KAUFERT	Y	<input checked="" type="radio"/>	A
LINTON <del>MURAT</del>	<input checked="" type="radio"/>	N	A
COGGS	<input checked="" type="radio"/>	N	A

AVE 12 NO 4 ABS 0

# NATURAL RESOURCES

## Water Pollution Credit Trading (Paper #628)

### Motion:

Move to require that any water pollution credit trading agreement authorized under the program be sunset within five years of the date of the agreement.

### Note:

SB 77 provide DNR \$50,000 SEG annually to conduct a pollution credit trading program but does not set a time limit under which agreements could be reached or how long agreement could last. The motion would require that any agreements authorized under the program could be for a maximum of five years.

MO# 1605

2 BURKE	(Y)	N	A
DECKER	(Y)	N	A
GEORGE	(Y)	N	A
JAUCH	(Y)	N	A
WINEKE	(Y)	N	A
SHIBILSKI	(Y)	N	A
COWLES	(Y)	N	A
PANZER	(Y)	N	A
JENSEN	(Y)	N	A
OURADA	(Y)	N	A
HARSDORF	(Y)	N	A
ALBERS	(Y)	N	A
GARD	(Y)	N	A
KAUFERT	(Y)	N	A
LINTON MUEAT	(Y)	N	A
COGGS	(Y)	N	A

AYE 16 NO 0 ABS 0



# NATURAL RESOURCES

## Water Pollution Credit Trading (Paper #628)

Motion:

Move to prohibit an entity involved in metallic or nonmetallic mining or prospecting activities from entering into agreements under the water pollution credit trading program.

MO# 3023

1 BURKE	<u>Y</u>	N	A
DECKER	<u>Y</u>	N	A
GEORGE	<u>Y</u>	<u>N</u>	A
JAUCH	<u>Y</u>	N	A
WINEKE	<u>Y</u>	N	A
2 SHIBILSKI	<u>Y</u>	N	A
COWLES	<u>Y</u>	N	A
PANZER	<u>Y</u>	N	A
JENSEN	<u>Y</u>	N	A
OURADA	<u>Y</u>	N	A
HARSDORF	<u>Y</u>	N	A
ALBERS	<u>Y</u>	N	A
GARD	<u>Y</u>	N	A
KAUFERT	<u>Y</u>	N	A
<del>LINTON</del> <u>MURRAY</u>	<u>Y</u>	N	A
COGGS	<u>Y</u>	N	A

AYE 15 NO 1 ABS 0

NATURAL RESOURCES

Water Pollution Credit Trading (Paper #628)

Motion:

Move to require that any pollution credit trading agreement authorized under the program involve the same pollutant or water quality standard. Further, require that only those water bodies listed on the impaired waters list submitted to the U.S. Environmental Protection Agency (EPA) under the Clean Water Act requirements be eligible project areas for the program.

MO#	1604		
2 BURKE	Y	N	A
DECKER	Y	N	A
GEORGE	Y	N	A
JAUCH	Y	N	A
WINEKE	Y	N	A
SHIBILSKI	Y	N	A
1 COWLES	Y	N	A
PANZER	Y	N	A
JENSEN	Y	N	A
OURADA	Y	N	A
HARSDORF	Y	N	A
ALBERS	Y	N	A
GARD	Y	N	A
KAUFERT	Y	N	A
LINTON - MUELLER	Y	N	A
COGGS	Y	N	A

AYE 16 NO 0 ABS 0

# NATURAL RESOURCES -- WATER QUALITY

## Watershed Stewardship Center

### Motion:

Move to provide \$50,000 SEG annually from the water resources account for a four-year project beginning in 1997-98 to establish a nongovernmental Watershed Stewardship Center to: (a) encourage and facilitate the formation and development of local watershed groups; (b) serve as an education and information clearinghouse; (c) administer start-up funding and provide technical assistance to local groups; and (d) administer a local stewardship competitive grants program to provide grants of up to \$5,000 for the formation and development of local watershed groups. The grants would be allocated by a Watershed Stewardship Council comprised of state agencies and local watershed interests.

### Note:

Grants would be used for organizational development and education. Expenses might include printing and postage for brochures and newsletters, local landowner surveys, facilitator and training costs. The motion would create an annual appropriation within DNR to fund these activities.

[Change to Base: \$100,000 SEG]

[Change to Bill: \$100,000 SEG]

MO# 3021

1 BURKE	Y	N	A
DECKER	Y	N	A
GEORGE	Y	N	A
2 JAUCH	Y	N	A
WINEKE	Y	N	A
SHIBILSKI	Y	N	A
COWLES	Y	N	A
PANZER	Y	N	A
JENSEN	Y	N	A
OURADA	Y	N	A
HARSDORF	Y	N	A
ALBERS	Y	N	A
GARD	Y	N	A
KAUFERT	Y	N	A
LINTON MURAT	Y	N	A
COGGS	Y	N	A

Motion #3021

AYE 13 NO 3 ABS 0

# NATURAL RESOURCES

## Water Pollution Credit Trading [Paper #628]

### Motion:

Move to require that City of Cumberland (Barron County) within the South Fork Hay River Watershed be designated as one of the project areas for the pollution credit trading program.

### Note:

SB 77 provides DNR \$50,000 annually from the nonpoint account of the environmental fund for a pollution credit trading program.

MO# 3019

BURKE	<u>Y</u>	N	A
2 DECKER	<u>Y</u>	N	A
GEORGE	<u>Y</u>	N	A
1 JAUCH	<u>Y</u>	N	A
WINEKE	<u>Y</u>	N	A
SHIBILSKI	<u>Y</u>	N	A
COWLES	<u>Y</u>	N	A
PANZER	Y	<u>N</u>	A
JENSEN	Y	<u>N</u>	A
OURADA	Y	<u>N</u>	A
HARSDORF	<u>Y</u>	N	A
ALBERS	Y	<u>N</u>	A
GARD	Y	<u>N</u>	A
KAUFERT	Y	<u>N</u>	A
LINTON <i>mura</i>	<u>Y</u>	N	A
COGGS	<u>Y</u>	N	A

AYE 10 NO 6 ABS 0

## NATURAL RESOURCES

### Nonpoint Source Water Quality Standards

#### Motion:

Move the following:

(1) Direct the Department of Natural Resources (DNR) to do the following:

a. set performance standards and prohibitions for facilities and practices for nonpoint sources of water pollution that are not agricultural for the purpose of achieving water quality standards by limiting the nonpoint source water pollution.

b. establish a process, exempt from administrative rules, for the development and dissemination of technical standards to implement the performance standards and prohibitions for facilities and practices that are not agricultural facilities and practices, and are nonpoint sources.

c. Require the DNR to develop alternatives where technical standards are capable of implementing the performance standards and prohibitions.

d. in consultation with the Department of Agriculture, Trade and Consumer Protection (DATCP), establish performance standards and prohibitions for agricultural facilities and practices that are nonpoint sources for the purpose of achieving water quality standards by limiting the nonpoint source water pollution. At a minimum, the prohibitions shall provide that livestock operations shall have no:

- overflow of manure storage structures.
- unconfined manure piles in water quality management areas.
- direct runoff from feedlots or stored manure into waters of the state.
- unlimited access by livestock to waters of the state where high concentrations of animals prevent adequate sod cover maintenance.

(2) Direct DATCP to do the following:

a. in consultation with DNR, establish conservation practices and technical standards for nonpoint source agricultural practices and facilities to implement the performance standards and prohibitions promulgated by the DNR.

b. require DATCP to promulgate rules relating to the conservation practices and a process for the development, and dissemination of the technical standards.

c. to promulgate rules, that at a minimum, establish conservation practices and technical standards for animal waste management, nutrients applied to the soil and cropland sediment delivery are capable of implementing the DNR's nonpoint source performance standards and prohibitions. Direct the DATCP to develop statewide agricultural nutrient management policies. Provide that the policies include components such as technical standards, incentives, educational and outreach strategy, and compliance requirements.

(3) expand the erosion control planning program in s. 92.10 and rename the program the land and water resource management planning program and provide that the program encompass all activities of the county land conservation department regarding nonpoint source water pollution.

(4) require that the performance standards and prohibitions for agricultural facilities and practices set by DNR and the conservation practices and technical standards set by DATCP apply to the following:

- priority watershed program.
- county land and water resource management planning program.
- farmland preservation cross-compliance.
- animal feeding operations.
- remedies under the right to farm statute.

(5) Local authority related to regulation of livestock operations.

a. provide that a local governmental unit may promulgate regulations that are consistent with and do not exceed the performance standards, prohibitions, conservation practices and technical standards promulgated by DNR and DATCP.

b. provide that the local governmental unit may exceed the performance standards, prohibitions, conservation practices and technical standards applicable to livestock operations promulgated by DNR and DATCP only if the local governmental unit demonstrates to the satisfaction of DNR or DATCP that more stringent regulations by the local governmental unit are necessary to achieve water quality standards promulgated by DNR.

c. require DNR and DATCP to promulgate procedures for review and approval of requests by local governmental units for more stringent regulations.

d. provide that a livestock operation that is required to apply for a permit under s. 283.31 (Wisconsin Pollution Discharge Elimination System permit) or an existing livestock operation that receives notice from the DNR of the requirement to comply with rules promulgated under ch. 283 (notice of discharges under NR 243 process) applicable to livestock operations,

may continue to operate at that location regardless of any city, village, town or county zoning ordinance under s. 59.69, 60.61, 60.62, 61.35 or 62.23(7) if the livestock operation is a lawful use or a legal nonconforming use.

(6) Requirements for cost sharing for conservation practices and prohibitions.

a. compliance with the performance standards, prohibitions, conservation practices and technical standards for agricultural facilities and practices for the abatement of nonpoint source water pollution caused or threatened to be caused by existing agricultural facilities and practices is not required until cost-sharing is available to the owner or operator.

b. direct DNR and DATCP to determine the requirements for "availability" of cost-sharing with respect to state enforcement of the nonpoint source performance standards, prohibitions, conservation practices and technical standards.

c. require that cost sharing requirements when any local government regulation shall be set in such local regulations.

d. provide \$2.0 million in general fund supported borrowing for nonpoint source water pollution abatement program activities for cost sharing for agricultural facilities to meet the nonpoint source prohibitions.

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Note:

Under current law, DNR sets the state's water quality standards and develops the technical practices that may be used to meet those standards. The motion would require that DNR set specific water quality and performance standards for nonpoint source pollution. However, DNR would only set the standards for practices necessary to meet those nonpoint source water quality standards for non-agricultural nonpoint source activities. DATCP would be allowed to establish the technical standards for practices for agricultural nonpoint sources.

The motion would also require DNR, in consultation with DATCP, to establish prohibitions (similar to those established by DNR and DATCP led animal waste advisory committee) for certain agricultural practices or facilities causing nonpoint source pollution. This would provide additional regulation of such practices and facilities. The DNR and DATCP committee, while not taking into account existing funding available under the nonpoint and other programs, indicated the cost of the regulation could be substantial. However, the regulations contained in the motion, including any prohibitions, related to agricultural facilities do not apply to existing agricultural facilities unless cost-sharing is available to that owner or operator to meet the regulations

Local units of government would be allowed to exceed the state water quality and performance standard, prohibitions, conservation and technical practice standard if the local government demonstrate to DNR and DATCP that the more stringent standards are necessary to achieve DNR's water quality standard. Further, any livestock facility that is required to apply for permit or is subject to DNR's NR 243 process would be allowed to continue to operate regardless of any local ordinance or the livestock facility is lawful use or a legal nonconforming use.

The bonding provided in the motion would be restricted to livestock operation to meet any prohibitions necessary to achieve water quality standards.

Terms related to the motion include:

1. "Agricultural facility" means any structure associated with an agricultural practice.
2. "Agricultural practice" means beekeeping; commercial feedlots; dairying; egg production; floriculture; fish or fur farming; forest and game management; grazing; livestock raising; orchards; plant greenhouses and nurseries; poultry raising; raising of grain, grass, mint and seed crops; raising of fruits, nuts and berries; sod farming; placing land in federal program in return for payments in kind; owning land, at least 35 acres of which is enrolled in the conservation reserve program under 16 USC 3831 to 3836 and vegetable raising.
3. "Livestock operation" means a feedlot or other facility or a pasture where animals are fed, confined, maintained or stabled.
4. "Local governmental unit" means a political subdivision of this state, a special purpose district in this state, an instrumentality or corporation of such a political subdivision or special purpose district, a combination or subunit of any of the foregoing or an instrumentality of the state and any of the foregoing.
5. "Navigable waters" has the meaning given in s. 281.31(2)(d).
6. "Nonpoint source" means a facility or practice that causes or has the potential to cause nonpoint source water pollution.
7. "Nonpoint source water pollution" means pollution of waters of the state that does not result from a point source as defined in s. 283.01(12).
8. "Water quality management area" means any of the following areas:
  - a. The area within 1,000 feet from the ordinary high-water mark of navigable waters that consist of a lake, pond or flowage. If the navigable water is a glacial pothole lake, this distance shall be measured from the high-water mark of the lake.



b. The area within 300 feet from the ordinary high-water mark of navigable waters that consist of a river or stream.

c. Specific sites that are susceptible to groundwater contamination or that have the potential to be a direct conduit to groundwater.

9. "Waters of the state" has the meaning given under s. 283.01(20).

[Change to Base: \$2,000,000 BR]

[Change to Bill: \$2,000,000 BR]

MO# 1609

1 BURKE	Y	N	A
2 DECKER	Y	N	A
GEORGE	Y	N	A
JAUCH	Y	N	A
WINEKE	Y	N	A
SHIBILSKI	Y	N	A
COWLES	Y	N	A
PANZER	Y	N	A
JENSEN	Y	N	A
OURADA	Y	N	A
HARSDORF	Y	N	A
ALBERS	Y	N	A
GARD	Y	N	A
KAUFERT	Y	N	A
LINTON <sup>MCANT</sup>	Y	N	A
COGGS	Y	N	A

AYE 14 NO 2 ABS 0

# NATURAL RESOURCES -- WATER QUALITY

## Construction Site Erosion Control

### Motion:

Move to exclude construction sites from any nonpoint source water quality or performance standards created under Motion #1609. Any existing construction site erosion control standards and regulations would continue to apply.

MO# _____				
BURKE	Y	<input checked="" type="radio"/> N	A	
DECKER	Y	<input checked="" type="radio"/> N	A	
GEORGE	Y	<input checked="" type="radio"/> N	A	
JAUCH	Y	<input checked="" type="radio"/> N	A	
WINEKE	Y	<input checked="" type="radio"/> N	A	
SHIBILSKI	Y	<input checked="" type="radio"/> N	A	
COWLES	<input checked="" type="radio"/> Y	N	A	
PANZER	<input checked="" type="radio"/> Y	N	A	
2 JENSEN	<input checked="" type="radio"/> Y	N	A	
OURADA	<input checked="" type="radio"/> Y	N	A	
HARSDORF	<input checked="" type="radio"/> Y	N	A	
1 ALBERS	<input checked="" type="radio"/> Y	N	A	
GARD	<input checked="" type="radio"/> Y	N	A	
KAUFERT	<input checked="" type="radio"/> Y	N	A	
LINTON	<input checked="" type="radio"/> Y	<input checked="" type="radio"/> N	A	
COGGS	Y	<input checked="" type="radio"/> N	A	
AYE <u>8</u> NO <u>8</u> ABS <u>0</u>				

NATURAL RESOURCES

Nonpoint Water Quality

Motion:

<sup>CPR</sup> Move to provide \$500,000 annually to implement the nonpoint water quality standards and performance requirements in Motion #1609.

MO#

3032

2 BURKE	(Y)	N	A
DECKER	(Y)	N	A
GEORGE	Y	(N)	A
JAUCH	(Y)	N	A
WINEKE	Y	(N)	A
SHIBILSKI	(Y)	N	A
COWLES	Y	(N)	A
PANZER	Y	(N)	A
JENSEN	Y	(N)	A
OURADA	Y	(N)	A
HARSDORF	Y	(N)	A
ALBERS	Y	(N)	A
GARD	Y	(N)	A
KAUFERT	Y	(N)	A
LINTON <sup>miss M</sup>	(Y)	N	A
COGGS	(Y)	N	A

AYE 6 NO 10 ABS 0

To: Joint Committee on Finance

From: Bob Lang, Director  
Legislative Fiscal Bureau

## ISSUE

### Permit Guarantee Program (DNR -- Water Quality)

[LFB Summary: Page 444, #20]

## CURRENT LAW

DNR administers several environmental programs that require approval of an application for a license, permit or other Department approvals.

## GOVERNOR

Require that DNR promulgate rules that would specify the allowable time limits for departmental approval of an application for a license, permit or other approval. The rules would require the Department to refund fees paid by applicants if the Department fails to approve an application prior to the time limit established under the rule. Require that a permit guarantee program be established for at least the permits, licenses or other required departmental approvals in the following program areas:

- a. navigable waters projects;
- b. well construction projects;
- c. certification of operators of water systems, wastewater treatment plants, and septage servicing vehicles and regulation of septage projects;
- e. discharges of mercury compounds;
- d. water pollution discharges (point sources);
- e. air pollution discharges;
- f. solid waste management facilities licenses; and
- g. regulation of hazardous waste facilities.

Require DNR to submit proposed rules for the permit guarantee program to Legislative Council staff for review no later than the first day after the 13th month beginning after the effective date of the bill.

## DISCUSSION POINTS

1. The permit guarantee program would impact several DNR permits, licenses or other approvals required by the Department. Examples of some of the large permit programs that would be subject to the permit guarantee program include: (a) permits for projects affecting navigable waters (approximately 3,000 permits annually); (b) the Wisconsin Pollution Discharge Elimination System (WPDES) permits (363 permits in 1995-96); (c) stormwater construction permits (350 in 1995-96); (d) air emissions related construction permits (162 in 1995-96); (e) air emissions related operating permits (154 in 1995-96); and (f) industrial stormwater permits (130 in 1995-96).

2. It should be noted that not all permit applications require a specific permit fee. However, the permittees do pay fees based on emission levels of various pollutants (such as the WPDES permittees). Therefore, it may be difficult to determine the fee amount that DNR would be required to repay in the event the permit guarantee agreement is not met. However, DNR indicates that the Department, under administrative rule, could determine the amount to be refunded for such permit applications.

3. DNR indicates that continuing operating permit applications that do not receive timely approval due to Department workload are generally provided an extension and are allowed to continue operations while awaiting permit approval. In many respects some of these approvals are similar to license approvals, in that the permits have to be renewed and often do not involve a large amount of review compared to initial permits or permits for expansions or construction.

4. It could be argued that requiring DNR to approve certain permits within a specified period of time could improve the service DNR provides to permittees. Further, knowing the time period necessary to receive approval of permit requests could allow permit applicants to better plan for projects requiring a permit.

5. Conversely, requiring DNR to guarantee permit applications within a specified time period could hinder the service DNR provides to permit applicants. That is, currently, if a permit applicant provides an incomplete application or does not take all the steps necessary to fulfill permit requirements, DNR generally works with the applicant throughout the permit approval process to complete the application and obtain the necessary information rather than rejecting the applicant's permit request based on incomplete or insufficient information. Under the permit guarantee program, if the "clock is ticking" on the permit guarantee, DNR may be forced to reject such applications for being incomplete or insufficient.

6. However, DNR indicates that the Department could, under administrative rules, allow for a temporary suspension of the approval process if both DNR and the permittee agree, so as to allow the permittee to sufficiently complete the application or respond to DNR inquiries regarding the permit application.

7. Further, permit applicants could knowingly slow the process by submitting an incomplete application or by not responding to Department inquiries regarding a permit application. However, DNR would continue to have the right to reject an incomplete project application or an unresponsive applicant.

8. Concerns have also been raised that setting a specific time frame could diminish the level of review that the Department would otherwise provide. However, DNR indicates that the bill provides the Department with the authority to establish the rules necessary to administer the program and provide the necessary review.

9. Currently, the permit program is generally handled on a first come-first served basis. Because DNR would be required to approve a permit within a specified period of time or forfeit the fee associated with the permit, DNR could potentially be forced to reallocate staff to those areas where permit guarantees are made. As a result, applicants for a permit that is not subject to the permit guarantee program, or is subject to a longer permit guarantee period, may have to wait longer for service.

10. Further, DNR has had a significant backlog under some of its permit programs (such as the WPDES) in the past, therefore it is uncertain the length of the permit guarantee period that would be established in order to alleviate such backlog. However, it should be noted that in September, 1994, a consultant study, ordered by the Legislature, recommended changes to DNR's permitting process. DNR is in the process of carrying out the consultant's recommendations. As a result of these recommendations and other process and policy changes, the backlog for several of the Department's permits has decreased substantially. For example, DNR has reduced its WPDES permit backlog by 78% since the fourth quarter of 1993.

11. Further, requiring DNR to issue a permit or other approval or risk losing revenue associated with the permit or approval could create a justification for additional staff to process permits subject to the guarantee program. Additional staff would likely result in increased fees to those applying for permits or other approvals. Also, if a significant level of refunds are made, fees paid by the remaining applicants could increase accordingly.

## ALTERNATIVES TO BASE

1. Approve the Governor's recommendation to require DNR to promulgate rules that would specify the allowable time limits for departmental approval of an application for a specified license, permit or other approval.
2. Maintain current law.

MO# A17 1

Prepared by: Al Runde

BURKE	Y	<u>N</u>	A
DECKER	Y	<u>N</u>	A
GEORGE	Y	<u>N</u>	A
JAUCH	Y	<u>N</u>	A
WINEKE	Y	<u>N</u>	A
2 SHIBILSKI	<u>Y</u>	<u>N</u>	A
COWLES	<u>Y</u>	<u>N</u>	A
PANZER	<u>Y</u>	N	A
/ JENSEN	<u>Y</u>	N	A
OURADA	<u>Y</u>	N	A
HARSDORF	<u>Y</u>	N	A
ALBERS	<u>Y</u>	N	A
GARD	<u>Y</u>	N	A
KAUFERT	<u>Y</u>	N	A
LINTON <del>MALEY</del>	Y	<u>N</u>	A
COGGS	Y	<u>N</u>	A
AYE	<u>8</u>	NO	<u>8</u> ABS <u>0</u>

NATURAL RESOURCES

Permit Guarantee Program (Paper #629)

Motion:

Move to require that any entity applying for a DNR permit or approval that is involved in metallic or nonmetallic mining or prospecting activities be ineligible to participate in the permit guarantee program.

Note:

Under SB 77 mining permits would not be eligible for the permit guarantee program. However, a mining operation may also be the holder of a permit that is eligible for the permit program, such as a Wisconsin Pollution Elimination Discharge or a navigable waters permit. Under the motion, such an operation would not be allowed to receive a permit guarantee on any application for a DNR permit or other approval.

MO# 3022

2 BURKE	<input checked="" type="radio"/>	N	A
DECKER	<input checked="" type="radio"/>	N	A
GEORGE	<input checked="" type="radio"/>	N	A
JAUCH	<input checked="" type="radio"/>	N	A
WINEKE	<input checked="" type="radio"/>	N	A
SHIBILSKI	<input checked="" type="radio"/>	N	A
COWLES	<input checked="" type="radio"/>	N	A
PANZER	<input checked="" type="radio"/>	N	A
JENSEN	<input checked="" type="radio"/>	N	A
OURADA	<input checked="" type="radio"/>	N	A
HARSDORF	<input checked="" type="radio"/>	N	A
ALBERS	<input checked="" type="radio"/>	N	A
GARD	<input checked="" type="radio"/>	N	A
KAUFERT	<input checked="" type="radio"/>	N	A
LINTON	<input checked="" type="radio"/>	N	A
COGGS	<input checked="" type="radio"/>	N	A

AYE 16 NO 0 ABS 0



NATURAL RESOURCES -- WATER QUALITY

Permit Guarantee Program

Motion:

Move to delete air operating and emission permits from the permit guarantee program.

MO# 1606

BURKE	<input checked="" type="radio"/>	N	A
DECKER	<input checked="" type="radio"/>	N	A
GEORGE	<input checked="" type="radio"/>	N	A
JAUCH	<input checked="" type="radio"/>	N	A
WINEKE	<input checked="" type="radio"/>	N	A
SHIBILSKI	<input checked="" type="radio"/>	N	A
COWLES	<input checked="" type="radio"/>	N	A
PANZER	<input checked="" type="radio"/>	N	A
JENSEN	Y	<input checked="" type="radio"/>	A
OURADA	<input checked="" type="radio"/>	N	A
HARSDORF	<input checked="" type="radio"/>	N	A
ALBERS	<input checked="" type="radio"/>	N	A
GARD	<input checked="" type="radio"/>	N	A
KAUFERT	Y	<input checked="" type="radio"/>	A
LINTON	<input checked="" type="radio"/>	N	A
COGGS	<input checked="" type="radio"/>	N	A

AYE 14 NO 2 ABS 0

MO#	NAME	Y	N	A
2024	BURKE	Y	N	A
	DECKER	Y	N	A
	GEORGE	Y	N	A
	JAUCH	Y	N	A
	WINEKE	Y	N	A
	SHIBILSKI	Y	N	A
	COWLES	Y	N	A
	PANZER	Y	N	A
1/22	JENSEN	Y	N	A
	OURADA	Y	N	A
	HARSDORF	Y	N	A
	ALBERS	Y	N	A
	GARD	Y	N	A
	KAUFERT	Y	N	A
	LINTON <del>WIKAT</del>	Y	N	A
	COGGS	Y	N	A

<p>To: Joint Committee on Finance</p> <p>From: Bob Lang, Director Legislative Fiscal Bureau</p>
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## ISSUE

### **Expedited Service for Permittees (DNR -- Water Quality)**

[LFB Summary: Page 445, #21]

## CURRENT LAW

DNR approves permits or makes other approvals for construction activities and other projects that affect navigable waters and wetlands.

## GOVERNOR

Provide 3.0 PR positions annually to administer a newly-created expedited permit service program. Allow the Department to establish a supplemental fee for various permits or approvals provided by the Department. The supplemental fee could only be assessed if the applicant requests, in writing, that the permit or approval be issued within a time period that is shorter than the existing period allowed for issuance and the Department verifies that it will be able to comply with the applicant's request.

Require DNR to promulgate rules to administer the program and establish the fee. In addition, require that rules specify a time limit allowed for making a determination as to whether or not to grant each type of permit or approval.

Permits or approvals in the following program areas would be affected:

- a. projects that affect navigable waters (for example, placing of dams, deposits or other obstructions in a navigable stream); and

b. projects that affect wetlands for which the Department has to make a determination that the project complies with state water quality standards.

Any revenues associated with the supplemental fees would be deposited to the Department's water regulation and zoning program revenue continuing appropriation.

## DISCUSSION POINTS

1. DNR approves approximately 3,000 permits annually for projects affecting navigable waters and approximately 300 approvals for projects for which the Department has to make a determination that the project complies with state water quality standards.

2. DNR estimates that it would take approximately \$160,000 annually to fund the three positions provided under the bill to administer the program. Further, DNR estimates that approximately 80 permittees (or approximately 2.5% of the annual permits or approvals) would make use of the expedited service program. This estimate is based on the number of large projects (over \$100,000 in costs) that would likely be interested in the expedited service and the annual complaint rates related to the permits or approvals.

3. At 80 permits per year, a \$2,000 flat rate fee would be needed to cover the staff costs associated with administering the program. Currently DNR charges between \$30 and \$300 for permits affecting navigable waters depending on the cost of the project and the amount of staff time required to approve the permit. DNR indicates that it is conceivable the 80 persons seeking permits or approvals per year would pay the \$2,000 rate. Further, DNR could structure the fee on a sliding scale based on the size of the project which could allow a fee of less than \$2,000 for small projects and a greater fee for large projects. However, to the extent that a sliding scale expedited fee structure results in a substantial increase in those applying for expedited service additional staff may be needed or staff may be reallocated from the non-expedited permit program.

4. The revenues associated with the expedited service fees would be deposited to the Department's water regulation and zoning permit program revenue account. The program revenue account is expected to end the biennium with a minimal balance and annual expenditures from the account are only slightly less than revenues. Therefore, it is unlikely that account could support any of the three positions provided under the bill to administer the expedited service program until revenues associated with the expedited fee accrue. Further, it is likely that the revenues associated with the expedited fees would not be received until 1998-99, at the earliest, and a significant demand for the expedited service may not occur until even later.

5. DNR indicates that existing staff would promulgate the rules and establish the program and the staff provided in the bill would not be hired until the program is in place. Further, it is uncertain whether three positions would be needed to provide expedited service for

perhaps 80 expedited permits annually. If the positions were not provided at this time, DNR could request appropriate staff under s. 16.505/515 when revenues and workload are known.

6. Concerns have been raised that setting a specific time frame could diminish the level of review that the Department would otherwise provide. However, the bill would allow DNR the opportunity to verify that the Department would be able to comply with the applicant's request for expedited service. Further, DNR would be provided authority to establish the rules necessary to administer the program and provide the necessary review.

## ALTERNATIVES TO BASE

1. Approve the Governor's recommendation to: (a) provide 3.0 positions annually to administer a newly-created expedited permit service program; and (b) allow the Department authority to promulgate rules to administer the program and establish a supplemental fee for various permits or approvals provided by the Department.

<u>Alternative 1</u>	<u>SEG</u>
1998-99 POSITIONS (Change to Base)	3.00
[Change to Bill]	0.00]

2. Provide DNR the authority to promulgate rules to administer the program and establish a supplemental fee for various permits or approvals provided by the Department (no staff would be provided at this time).

<u>Alternative 2</u>	<u>SEG</u>
1998-99 POSITIONS (Change to Base)	0
[Change to Bill]	-3.00]

3. Maintain current law.

<u>Alternative 3</u>	<u>SEG</u>
1998-99 POSITIONS (Change to Base)	0.00
[Change to Bill]	-3.00]

Prepared by: Al Runde

MO# Alt 2

2 BURKE	<u>Y</u>	N	A
1 DECKER	<u>Y</u>	N	A
GEORGE	<u>Y</u>	N	A
JAUCH	<u>Y</u>	N	A
WINEKE	<u>Y</u>	<u>N</u>	A
SHIBILSKI	<u>Y</u>	N	A
COWLES	<u>Y</u>	N	A
PANZER	<u>Y</u>	<u>N</u>	A
JENSEN	Y	<u>N</u>	A
OURADA	Y	<u>N</u>	A
HARSDORF	Y	<u>N</u>	A
ALBERS	Y	<u>N</u>	A
GARD	Y	<u>N</u>	A
KAUFERT	Y	<u>N</u>	A
LINTON <sup>MUZAT</sup>	<u>Y</u>	N	A
COGGS	<u>Y</u>	N	A

AYE 8 NO 8 ABS 0

MO# Alt 1

2 BURKE	(Y)	N	A
DECKER	(Y)	N	A
GEORGE	(Y)	N	A
JAUCH	(Y)	N	A
WINEKE	(Y)	N	A
SHIBILSKI	(Y)	N	A
COWLES	(Y)	N	A
PANZER	(Y)	N	A
1 JENSEN	(Y)	N	A
OURADA	(Y)	N	A
HARSDORF	(Y)	N	A
ALBERS	(Y)	N	A
GARD	(Y)	N	A
KAUFERT	(Y)	N	A
LINTON	(Y)	N	A
COGGS	(Y)	N	A

AYE 16 NO 0 ABS 0